IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5876 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT WATER SUPPLY AND SEWERAGE BOARD - Petitioner(s)
Versus
HEMANTSINGH RAVJIBHAI DODIA - Respondent(s)

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Appearance :
MR MEHUL H RATHOD for Petitioner(s) : 1,
MR KM SARVAIYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/07/2007

ORAL JUDGMENT

1. Shri Mehul Rathod, learned counsel for the petitioner; Shri K.M. Sarvaiya, learned counsel

for the respondent. The parties are heard.

2. Petitioner-Gujarat Water Supply & Sewerage Board, being aggrieved by the award dated 30th April, 1999 passed by the Presiding Officer, Labour Court, Rajkot in Reference LCR No. 1252 of 1989, is before this Court with the complaint that the learned Labour Court was unjustified in directing reinstatement of the respondent with 50% back wages.

3. According to the petitioner, the respondent was engaged on 16.4.87 as Casual Labour on daily wages and was assigned work of a driver, that on 17.5.89, the respondent, of his own did not report for duty and informed the officer of the present petitioner that he was not interested in working as daily wager. According to the petitioner, on 20th May, 1989, they issued a letter to the respondent asking him to report on duty, and as alleged, the respondent did not report on duty. On 12.6.89, the respondent came to the office of the petitioner, received all his dues and wages due up to 16th May, 1989 without raising any objection. Thereafter, at

the request of the respondent-workman, the matter was referred to the Labour Court, Rajkot for adjudication, the matter was registered as Reference LCR No. 1252/89.

4. After recording the evidence and hearing the parties, the learned Labour Court answered the Reference in favour of the respondent directing reinstatement of the respondent with 50% back wages.

5. Shri Mehul H. Rathod, learned counsel for the petitioner submits that the court below was unjustified in not appreciating that the workman had left the services, rather abandoned the services of his own on 17.5.89 and despite information from the side of the petitioner, he did not report on duty, the learned Labour Court could not answer the Reference in favour of the workman. Shri Sarvaiya, learned counsel for the respondent on the other hand submitted that there is no acknowledgment from the side of the workman that letter dated 17.5.89 was served upon him. He however, submitted that the respondent was, in fact, retrenched and theory

of abandonment of services has been concocted and manufactured.

6. From the records, it is to be seen that the letter dated 17.5.89 was prepared and issued to the respondent. An endorsement is made at the foot of the letter that letter was offered to Mr. Dodiya but Mr. Dodiya refused to accept it. Copy of the letter has been produced before the Labour Court to contend that such letter was served upon the respondent but he refused to accept it. It is, however, to be noted that the person who prepared the letter or the person who offered the letter to Mr. Dodiya-respondent, has not been examined in the court to show that the letter was offered to Mr. Dodiya and he refused to accept it. In absence of examination of the witnesses to prove the fact that the letter was offered to Mr. Dodiya, this Court is not ready and willing to rely upon the statement of the person who did not offer the letter but simply said before the Court that such letter was offered. If the letter dated 17.5.89 and its offer to the other side is not proved, then, the

only question would be that whether the respondent voluntarily of his own accord or because of the retrenchment had to leave the job. In a petition under Article 227 of the Constitution of India, this Court is not required to reappreciate the evidence unless it is shown to the Court that the findings are perverse and no prudent man can record such findings. In the present case, the learned court below had jurisdiction to rely upon the oral evidence of the other side and record a finding. While recording a finding, if the Labour Court found that the statement of the workman was worth reliance, then, this Court would not substitute the findings by reappreciating the evidence. In view of the above facts, in the opinion of this Court, the Labour Court was not unjustified in holding that present was a case of illegal retrenchment.

7. It was then contended that the respondent was gainfully employed with Conservancy Department of the Municipal Corporation of Rajkot since November, 1996, therefore, the respondent would

not be entitled to any salary for the period beyond November, 1996.

8. Shri Sarvaiya, learned counsel for the respondent workman, however, submitted that the respondent had hardly worked for a period of eight months and since thereafter, continues to be unemployed. It is to be noted that certificate-Annexure:C issued by the Municipal Corporation of Rajkot on 17.7.99 has been certified on oath by the petitioner. Unless it is shown to the Court that the statements made on oath are incorrect, uncontroverted statements would always march over the oral argument of the other side. For the reasons best known to the respondent, he has not filed any counter affidavit nor stated on oath that he was unemployed and worked for short time nor did he propose to file any certificate from the Rajkot Municipal Corporation to convince this Court that the respondent had worked for short period and now continues to be unemployed.

9. In view of the discussion aforesaid, I must hold that the learned court below was justified

in answering the Reference in favour of the respondent with a direction for his reinstatement with 50% back wages, however, the respondent would not be entitled to any salary for the period beyond November, 1996 as he continues to be gainfully employed. The petitioner would be obliged to reinstate the respondent within a period of 45 days from today.

10. The petition to the extent indicated above, is allowed. Rule is made absolute accordingly. Interim relief, however, is vacated. No costs.

[R.S. GARG, J.]

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